

 **ORIGINAL**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Virginia Cellular LLC	)	
	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
in the State of Virginia	)	

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JUN 11 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Wireline Competition Bureau

**REPLY COMMENTS OF VIRGINIA CELLULAR LLC**

Virginia Cellular LLC ("Virginia Cellular"), by its attorneys and pursuant to the FCC's Public Notice announcing the comment cycle in this proceeding,<sup>1</sup> hereby files these reply comments in the above-captioned proceeding. The Cellular Telecommunications and Internet Association ("CTIA") and the Virginia Rural Telephone Companies ("Virginia RTCs") filed comments. CTIA recommended that Virginia Cellular's Petition be granted. The Virginia RTCs do not oppose the Petition, but instead ask the Commission to consider a number of issues.

As shown below, none of the issues raised by the Virginia RTCs warrants a delay in granting Virginia Cellular's application. Most of the issues are not new or novel, and some are more properly raised in the course of the Commission's ongoing proceedings in CC Docket No. 96-45, dealing with universal service generally. Accordingly, Virginia Cellular urges the Commission to grant its application expeditiously so that residents in the Virginia - 6 RSA can

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<sup>1</sup> Public Notice, DA 02-1152 (released May 15, 2002). The pleading cycle was extended by Order, DA 02-1253 (released May 24, 2002).

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soon realize the benefits that a competitive eligible telecommunications carrier ("CETC") can bring.

**I. Some Issues Are Properly Raised in the Course of FCC Docket 96-45.**

The macroeconomic concerns expressed by the Virginia RTCs with respect to the potential effect that a grant of Virginia Cellular's Petition will have on the federal high cost support fund are not properly addressed in this proceeding. The Commission, in conjunction with the Federal-State Joint Board on Universal Service, is conducting ongoing proceedings to ensure that the high cost loop support system remains solvent in upcoming years. In its *MAG Order*, the FCC requested additional comment on most, if not all of the issues raised by the Virginia RTCs concerning the effect that CETCs may have on growth in the high cost fund and its future implications.<sup>2</sup>

It would be grossly impractical for the Commission to develop a record in this proceeding seeking to determine what effect, if any, designating Virginia Cellular as an ETC in four rural counties in Virginia will have on the nation's high cost support system as a whole. Such an inquiry is more properly made in the course of a rulemaking proceeding. In the meantime, there is no public interest reason to delay action on the captioned application; only the private interests of the Virginia RTCs favor such a course.

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<sup>2</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order and Twenty-Second Order on Reconsideration*, 16 FCC Rcd. 11244, (May 23, 2001) ("MAG Order").

The Commission is not being asked to grant ETC status to a “multitude of carriers” as suggested by the Virginia RTCs.<sup>3</sup> Only Virginia Cellular’s application is at issue. Again, concerns about the policy issues inherent in designation of multiple ETCs are more appropriately raised in rulemaking proceedings currently pending before the FCC in CC Docket No. 96-45.

## **II. Virginia Cellular Meets the Commission’s Nine-Point Checklist**

### **A. Access to Emergency Services.**

Section 54.101 of the Commission’s rules require ETCs to provide access to emergency services. Provision of enhanced 911 services is not required until local governments have implemented enhanced 911 systems. Virginia Cellular is in the process of implementing Phase I E-911 services in those areas where local governments have developed E-911 functionality. Virginia Cellular anticipates meeting all E-911 mandates on a timely basis. Currently, the company is in negotiations with Verizon to complete a new interconnection agreement which will facilitate the provision of E-911 service in Harrisonburg city and Rockingham county. Accordingly, the speculative comments that Virginia Cellular may not be able to “effectively implement E911” are misplaced.<sup>4</sup>

High cost loop support for infrastructure investment in remote areas is the best thing that ever happened to a 911 call. As the Commission is well aware, unlike most cities where a phone

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<sup>3</sup> Virginia RTC Comments at p. 3.

<sup>4</sup> *Id.* at p. 5. Contrary to the Virginia RTC’s suggestion, digital is not required to implement either Phase I or Phase II E-911, and even if it were, Virginia Cellular has deployed digital in Harrisonburg city and Rockingham county and plans to expand digital service as rapidly as possible.

is rarely more than 100 yards away, telephone service in rural areas is not taken for granted. Virginia Cellular believes it would be hard to find anybody in rural areas who would not like the option to complete a 911 call in the event of an accident or other emergency in a remote location. On a wireline network, calls for medical attention, police, fire, or rescue can only be made from those geographic points at the end of the wire. As high cost loop support increases wireless infrastructure investment facilities into remote areas, the improved health and safety benefits will be obvious and measurable. Most notably, wireless 911 call completion rates will rise and E-911 will improve response times.

**B. Local Usage Requirements.**

As stated in its Petition, Virginia Cellular will offer a variety of local usage plans as part of a universal service offering. To be clear, all of Virginia Cellular's current rate plans include access to the local exchange network, in compliance with the FCC's rules, and many plans include a large volume of minutes, to accommodate heavy users. The Virginia RTCs are incorrect in speculating that Virginia Cellular's current service offering includes no local usage.

In addition, the company is considering a fixed wireless offering similar to that provided by other wireless ETCs, which would offer unlimited local usage. This rate plan may be implemented if there is demand for such an offering, which essentially duplicates the wireline carrier's local service plan.

**C. Equal Access.**

As the Virginia RTCs know, ETCs must provide access to interexchange services, which Virginia Cellular does. Neither ETCs nor CMRS carriers are required to provide equal access.

Virginia Cellular's customers may dial around to their interexchange service provider of choice, either directly (e.g 1010-XXX or 1-800-XXX-XXXX) or by using a calling card.

**D. Participation in Lifeline/Link-Up.**

Virginia Cellular will participate in the Lifeline and Link-Up programs, and will advertise the availability of low cost telephone service to qualifying customers. Virginia Cellular understands that its commitment in this area will be an important component in its continuing eligibility to receive high cost support funding.

**E. Virginia Cellular Will Provide Service Throughout its ETC Service Area.**

The Virginia RTCs express concern that Virginia Cellular's signal may not be available in certain areas where it is designated as an ETC due to terrain factors.<sup>5</sup> In point of fact, Virginia Cellular's service is currently available over a larger geographic area than ILECs, who are limited to serving only those points at the end of their lines. Moreover, just as a wireline carrier is not required to extend lines to every geographic point, there is no rule which requires a wireless carrier to serve every square foot of its service area to be eligible for ETC status. High cost support will enable Virginia Cellular to extend and improve its network and hopefully eliminate very soon those areas which experience less than optimum signal strength. Infrastructure investment in these areas will improve Virginia Cellular's service offering much the same as ILEC service improved in the years after they began receiving high cost support.

When the Virginia RTCs' began receiving high cost support, they did not serve every customer who desired service. It is the high cost support which enabled the Virginia RTC

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<sup>5</sup> Virginia RTC Comments at p. 6.

companies to extend their networks into high cost areas, to the benefit of Virginia's consumers. For example, Highland Telephone Cooperative ("Highland") notes the low subscriber density and high percentage of elderly people on fixed incomes in its service area, yet it credits high cost support as making it possible for it to install fiber optic plant. MGW states that it provides "state of the art telecommunications service to all of its customers at affordable rates - something that would not be possible in this very rural area but for universal service support."<sup>6</sup> Virginia Cellular concurs with these statements, which essentially concede that, even today, remote areas of Virginia would not have wireline service without the provision of high cost support.

There is simply no business plan, wireline or wireless, which enables a company to provide high quality local exchange service to customers in most remote areas, unless high cost support is provided. In the absence of high cost support, wireless service will only be seen as a convenience, but will not offer rural customers a choice of local service providers that many urban customers enjoy today. With high cost support, a wireless carrier such as Virginia Cellular will be able to improve its network and bring alternative services, which will drive competitive offerings from incumbents, all to the customer's benefit.

The Commission has made a policy judgment that encouraging competitive ETCs to apply for high cost loop support will serve the public interest by developing infrastructure investment in rural areas.<sup>7</sup> It has also consistently granted applications for ETC status, noting that

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<sup>6</sup> Virginia RTC Comments at p. 10.

<sup>7</sup> See e.g., *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776, at 8802-3, 8944; *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming* (2000) ("Western Wireless"),  
(continued...)

there is no evidence that competitive entry in even remote areas will have negative effects on incumbent carriers.<sup>8</sup> Virginia Cellular firmly believes that a grant of its Petition will enable the company to accelerate its construction schedule in these areas and bring competitive services to customers who might otherwise never see such benefits.

#### **IV. The Commission Should Redefine Service Areas as Appropriate.**

Virginia Cellular has set forth a proposal to redefine the service areas of MGW Telephone Company ("MGW"), NTELOS Telephone ("NTELOS"),<sup>9</sup> and Shenandoah Telephone Company. With respect to Shenandoah and NTELOS, there is no question but that the noncontiguous portions of their study areas should be each designated as a separate service area. Virginia Cellular is not licensed beyond the Virginia - 6 RSA and cannot serve noncontiguous areas.<sup>10</sup> Alternatively, the FCC may determine that redefinition along wire center boundaries is appropriate.

With respect to MGW, the area that Virginia Cellular is not licensed to serve is so small as to be almost *de minimis*. Virginia Cellular requests that each MGW wire center be defined as a

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<sup>7</sup>(...continued)

16 FCC Rcd 48, at 55; *Guam Cellular and Paging, Inc. d/b/a Guamcell Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, DA 02-174 (January 25, 2002), ¶15.

<sup>8</sup> See e.g., *Western Wireless*, 16 FCC Rcd at 57.

<sup>9</sup> NTELOS was formerly known as Clifton Forge Waynesboro Tel Co., which is the name Virginia Cellular used in its Petition.

<sup>10</sup> See e.g., *Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(e)(2), Recommended Decision of the Hearing Examiner and Certification of Stipulation*, Utility Case No. 3026 (Aug. 14, 2001), p. 17-18.

separate service area and that Virginia Cellular be designated as an ETC in its authorized CGSA, as depicted in Exhibit C to its Petition. It is not necessary that an incumbent LEC and a competitive ETC have identical service areas, but rather all ETCs are required to offer service throughout their respective ETC service areas.<sup>11</sup>

As shown in its Petition, Virginia Cellular's proposal is consistent with the Federal-State Joint Board's recommendations concerning cream skimming, administrative burden, and preserving the status of rural telephone companies. Given that all rural telephone companies have had an opportunity to disaggregate high cost support on May 15, 2002 pursuant to the *MAG Order*, concerns about cream skimming are all but moot.<sup>12</sup> Through the disaggregation process, each of the affected rural telephone companies in this proceeding has the opportunity to ensure that Virginia Cellular focuses its efforts in the highest cost portions of their respective study areas and that efforts to compete in low cost areas will not be subsidized.

Virginia Cellular is constrained to note that two affected companies, Shenandoah and NTELOS, have chosen to not disaggregate high cost support. In both cases, their choice to proceed under Path 1 appear to have been made for the wrong reasons.

Shenandoah admits that it "continues to average its support across all nine of its exchanges because any disaggregation would have resulted in staggering increases in the support needs in Bergton, which is the highest cost exchange in Shenandoah's study area."<sup>13</sup> Bergton

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<sup>11</sup> 47 U.S.C. §214(e)(1); 47 C.F.R. §54.201(d).

<sup>12</sup> See, 47 C.F.R. §54.315.

<sup>13</sup> Virginia RTC Comments at p. 12.



happens to be the only Shenandoah exchange that Virginia Cellular proposes to include in its ETC service area. Clearly, Shenandoah is not concerned about cream skimming. Quite to the contrary, it appears to be cutting Virginia Cellular out of receiving an appropriate amount of high cost support in Bergton. There is absolutely no support for the proposition that increases in high cost support levels in remote exchanges would not serve the public interest - in fact Commission policy is exactly the opposite.

The FCC has stated on multiple occasions that it is in the public interest to more accurately target support to higher cost areas, and that incumbents must maintain existing levels of total support as a result of disaggregation.<sup>14</sup> Virginia Cellular believes that Shenandoah's choice under Path 1 denies Virginia Cellular the appropriate level of high cost support in the most remote sections of Shenandoah's study area and may have been made for anti-competitive reasons.<sup>15</sup>

NTELOS takes the opposite approach. It alleges that Virginia Cellular may be cream skimming because it is serving a lower cost exchange. Yet NTELOS did not disaggregate support on May 15, citing "extremely dramatic increases" in the support levels in other areas.<sup>16</sup> Given that overall support does not increase as a result of disaggregation, such increases would be met with equally dramatic decreases in support in low cost areas, which would preclude

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<sup>14</sup> *First Report and Order, supra* at 8944; *MAG Order, supra* at 11299-11309.

<sup>15</sup> Virginia Cellular understands that this proceeding is not the proper forum to propose an alternate plan of disaggregation for Shenandoah.

<sup>16</sup> Virginia RTC Comments at p. 11.

Virginia Cellular from receiving an appropriate level of support. Having chosen Path 1, NTELOS is now estopped from complaining about the possibility of cream skimming.

Pursuant to Section 54.207(d) of the Commission's rules, the FCC may propose to redefine a carrier's service area and request the concurrence of the state commission. In this case, the Commonwealth of Virginia has kept its proceeding in Case No. PUC010263 open for just this reason.<sup>17</sup> Virginia Cellular urges the Commission to adopt its recommended plan to redefine affected LEC service areas, and, if necessary, request concurrence from the Virginia Corporation Commission as a part of its order.

## **VI. Conclusion**

The Virginia RTCs have not raised any issue which warrants any delay in granting Virginia Cellular's Petition. Provision of high cost loop support will drive infrastructure investment in precisely those areas which need it most - remote areas where a standard business plan does not permit such investment. Virginia Cellular is committed to improve telephone service and appreciates the opportunity that this proceeding affords it to invest in America's rural areas.


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<sup>17</sup> *Application of Virginia Cellular LLC, for Designation as an Eligible Telecommunications Provider Under 47 U.S.C. § 214(e)(2), Order* (April 9, 2002), at p. 5.

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Respectfully submitted,

**Virginia Cellular LLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the REPLY COMMENTS OF VIRGINIA CELLULAR LLC was sent via U.S. Mail to the following persons on this 11<sup>th</sup> day of June, 2002:

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